

**RECOMMENDED
ADDITIONS TO RULES
OF THE ALBANIAN
WATER SUPPLY AND
SANITATION
REGULATORY
COMMISSION**

FINAL REPORT

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1. Introduction

This document is intended to fulfill the requirements of Tasks 7 and 8 of Contract Number EPE-C-95-0011-0 and Task Order IPP-116-01 between the Urban Institute and the Institute for Public-Private Partnerships. Task 7 requires a reporting on the status of the rules developed by the Albanian Water Supply and Regulatory Commission (WSSRC) using the *Regulatory Handbook/Resource Manual*, developed by consultants for the Commission and delivered in August, 1999. Task 7 further requires recommendations on the current version of the WSSRC's rules, adopted March 9, 1999. (This iteration of the rules translated into English is attached as Appendix A.)

Task 8 calls for an identification of next steps in the operationalization of the WSSRC. A fully-functioning Commission is an integral part (if not the key element) in reforming Albania's water and wastewater sector such that the sector is responsive to the public interest and attractive to private sector participants (PSPs).

2. Background

In 1996, the Government of Albania (GOA) enacted The Water Supply and Sanitation Regulation Act as one of the initial steps in its reform of the water and wastewater sectors. The Act established an independent regulatory commission to regulate the sectors. It is composed of 5 members, appointed in August 1998. They are: Vladamir Meksi (Chairman); Vilma Bilboli; Marijana Coku; Ana Metohu; Jeta Manoku.

In May 1998 a training program in utility regulation was developed for the (then unappointed) Commissioners. In December 1998 after the Commissioners' appointments a two-week training session was held in Skopje, Macedonia.

As the result of the Skopje training, consultants prepared a *Resource Book for the Albanian Regulatory Manual*. This document essentially provided options from which Albanian Commissioners could choose in developing their own set of initial rules.

That initial set of rules, as noted above, was adopted by the WSSRC in Tirana, Albania on March 9, 1999.

3. Summary of Existing Rules

The existing rules (found in translation in Appendix A) concentrate on licensing provisions, tariff setting, and some general procedural matters as well as procedural issues related to licensing and tariffs.

4. Analytical Methodology and Criteria for Evaluation

In evaluating the existing set of rules, the following criteria were established:

- No wholesale changes would be recommended except in an instance in which consultants believed that a particular provision was in direct contradiction to sound regulatory principles. The Commission is a relatively new entity, still attempting to assert its proper authority, and changes in its initial set of rules could serve to cause confusion among the regulated entities at best, and could diminish the Commission's credibility at worst. Hence, subject to that caveat, the recommendations made below are proposed additions to the existing rules, not substitutions.
- The specific topical areas addressed were selected by various means. Subjects that had been identified by the WSSRC members during a previous visit to Tirana were evaluated. (For a listing of those topics see pp. 4-6 of the *Progress Report*, dated August 11, 1999.) Additionally, alternatives presented in the *Resource Manual* of June 25, 1999 (as summarized in the Appendix to the *Progress Report*) were evaluated for inclusion in the rules. Finally, issues that arose during interviews with water and wastewater industry stakeholders in Albania in the course of reviewing the first set of rules were analyzed.
- Finally a minimalist approach was taken. That is, no attempt was made to develop a tome that would be too detailed and legalistic for an emerging economy. The WSSRC is a new entity and has been operating with a very sketchy set of rules, but it has been operating nonetheless. This effort is an attempt to incrementally flesh out the existing rules. This will be a constant, incremental process. Indeed, one of the final recommendations is to revisit and update the rules annually for an indeterminate period of time.
- The method of presentation of these analyses and recommendations is to first identify the issue and discuss it, then make a policy recommendation, concluding with actual language that could be inserted into a particular location in the rules. References to the section of the *Resource Manual* where the language for a recommendation is found are included, as appropriate so that the language need not be inserted into this text. The order of analysis and recommendations generally follows the headings contained in the existing rules.

5. Recommended Changes to the Rules

Section 1: Organizational Structure of the Commission.

Commissioner Code of Conduct. A brief statement like that contained in Section 1.9.1.2 of the *Resource Manual* should be added to the rules. It simply states that a Commissioner shall not accept anything from a utility or one of its affiliates, either directly or indirectly. This provision is important for public trust.

Section 2: Procedural Matters Related to the Commission.

1. Transparency in Proceedings. The current provisions concerning procedural matters consist of seven general points. There are also some general procedural issues covered in Section 3, related to licensing, and Section 5, relating to the procedures for changing tariffs. In order to enhance transparency in the WSSRC's decisionmaking activities, some additional detail is recommended.

In the water and wastewater industries, perhaps the last natural monopolies in the utility industry, all proceedings should be open to the public. Since there is no competition in a given area there is little confidential information to shield from a competitor. Additionally, if the rationale of a regulator is to act in the public interest, the public does have some claim to being able to observe the WSSRC's actions. This is especially the case if the public is paying for the operation of the WSSRC through a regulatory assessment established by the Commission for each utility and passed along to the customer in the utility's rates.

As of December, 1999, the WSSRC has issued 28 licenses to water companies (out of a universe of 50), and one license to a wastewater company (from a universe of 46). (Wastewater companies are in the process of being combined with water companies. Hence wastewater companies have been unsure as to whether they are required to apply for licenses.) Additionally, the Commission has granted rate increases to 9 water companies. However, all of those proceedings have occurred in a non-transparent manner. Documentation relating to the calculation for rate increases exists in the WSSRC's files (indeed, the application is very well developed), but is not open to public inspection. The actual determination of new rates for a company is done in a private meeting in the Commission's offices with only the company and the Commissioners present.

In any proceeding involving licensing, the setting of rates, or handling a formal complaint about water or wastewater service, a formalized, transparent procedure should be followed. The outline of such a procedure follows. These provisions can be read in conjunction with the existing procedural rules on licensing and tariff setting in Sections 3 and 5, respectively, of the existing rules since the recommendations below pertain more to the matter of the hearing procedure. The existing rules apply more to the matter of the application process.

The text that follows is intended to be actual rule language that can be inserted in Section 2 of the existing rules. The seven general provisions currently in Section 2 can have a header entitled: *General Procedures* to distinguish it from the following text. Rule text is italicized, while any explanatory comments that are not intended to be in the rules are in a standard font. Additionally, the numbering scheme on the recommended rules would have to be adapted to the existing rules; the numbering scheme used in this report is for purposes of organizing the report.

Procedures for Hearings (All matters listed in 1.1 must have an open hearing.)

- 1.1 *All applications for licenses, a change in any rate, or a formal complaint under the jurisdiction of the Commission shall be archived at the WSSRC Offices and available for public inspection.*
- 1.2 *A public notice that the application has been made shall be published in a newspaper of general circulation in the geographical area affected by the application, unless the Commission authorizes another means of notice. The Commission shall prescribe the form and content of the notice. Expenses for publishing the notice are to be borne by the company making the application.*
- 1.3 *Any member of the public desiring to state his or her position on the application shall be allowed to do so in writing. These communications shall be placed in the same archive as the application and open to public inspection.*
- 1.4 *The WSSRC staff shall analyze the application and produce a written report and recommendation. This report and recommendation shall be placed in the same official archive and be available for public inspection. A copy should also be transmitted to the applicant, as well as each Commissioner.*
- 1.5 *After completion of the report and recommendation a date for a public hearing on the application shall be set and the hearing held at which: a) any member of the public shall be able to appear and speak on the application; b) the applicant will be permitted to state its position and produce evidence supporting it; c) the WSSRC staff will be permitted to state its position and produce evidence supporting it; d) Commissioners will question the applicant and staff on their positions.*
- 1.6 *The public hearing referenced above shall be noticed in a manner prescribed by the Commission. The notice shall contain the time and date of the meeting and the item(s) on the agenda. This should be published a reasonable time prior to the meeting date. (According to the existing rules Commissioners are required to have all relevant documentation two days prior to a meeting. Hence two-day provision for advertising Commission meetings might be reasonable.) At times when the Commission has more than one item on its agenda, affecting companies from various parts of Albania, the notice would probably be placed in a newspaper in the area where the WSSRC was meeting or in Tirana, where it is likely most WSSRC meetings would be held. In the alternative, a notice of a WSSRC meeting could simply be published at the WSSRC offices in Tirana.*
- 1.7 *After the hearing, except in emergency situations the Commissioners shall take the case under advisement. A draft Decision shall be written for them by a staff member that has not been involved in the case except to the extent of reading the archived documents and attending the hearing. (This staff member could be an individual specifically hired for this function only—a “Hearing Specialist”—or a staff member assigned on a rotating basis. This could possibly be done on a contract basis by a consultant.) In*

emergency situations the Commission may rule immediately and produce the written Decision within two days. This provision touches upon ex parte communications, discussed elsewhere in this report.

- 1.8 *While the draft Decision is being prepared, Commissioners shall be prohibited from discussing the substance of the case among themselves collectively or individually. Additionally, Commissioners shall also refrain from discussing the matter with the applicant, the staff member that wrote the staff recommendation, or any member of the public.* Members of the public might want to lobby Commissioners. It is not inconceivable that some public members may actually be surrogates for the applicant. Hence Commissioners should refrain from getting additional information outside of the public process. If a member of the public were to write a letter to an individual Commissioner, that Commissioner should place the letter in the official archive for that case and copies should be made for the applicant and the staff. If a member of the public sought to approach a Commissioner individually and verbally give an opinion about a pending application, the Commissioner should urge that individual to appear at the public hearing where the vote is to be taken and express themselves and/or write a letter that will be put in the official archive and read by all parties to the case.

In short, all discussions on the merits of an application should be carried out in public hearings, otherwise transparency is diminished. Sanctions against Commissioners discussing the merits of a case outside of a public hearing may be included in the rules.

These prohibitions do not preclude a Commissioner from examining the contents of the archive while formulating his or her own opinion. Nor would these prohibitions prevent a Commissioner from speaking with the staff member(s) involved in the staff recommendation to simply clarify technical issues. (Admittedly, this is a fine line with much judgement involved.)

- 1.9 *When a draft Decision has been completed, copies shall be archived along with the original application and transmitted to the applicant, Commission staff, and each Commissioner.* This pursuant to existing rule must be done at least two days prior to the date that the WSSRC sets for making a final decision on the application.
- 1.10 *After receiving the draft Decision, the Commission shall set a time, date, and place for a vote in public on the matter. The applicant, staff, and any member of the public shall be allowed at this point to make final statements about the draft Decision and be questioned by the Commissioners. The Commissioners may also debate the matter among themselves and by a majority vote of those present (assuming a quorum of three exists) accept, reject, or modify the draft decision. A final written Decision shall be completed within two days, archived, and transmitted to the applicant and Commission staff.*

Hence, there are three opportunities for public input during a licensing or ratemaking process, in this approach: a) when an application is filed; b) when the formal hearing is held; c) when the Commission votes on the matter.

This entire process must take place within the period of time for processing each matter as set forth in the existing rules. Should the existing rules not allow adequate time for this degree of transparency, it is recommended that the amount of time presently allowed for licensing applications and rate hearings are extended in the rules. (Decisions on licensing applications are required by Section 4 of the existing rules within one month and on applications for new rates within 45 days pursuant to Section 5.)

2. An additional portion of Section 2 of the rules should be added, entitled: “Public Access to Records.” Sections 1.6 (with the exception of Subsection D.) through 1.8 of the *Resource Manual* should be included in the rules. These rules state that information on companies (not limited to the matters discussed in the transparency section of this report) is publicly available, the days on which the WSSRC’s offices are open and the hours that public documents are available for inspection. These rules further authorize the WSSRC to charge the actual cost for making copies of public documents. (It is recommended that this information be prominently posted in the room where the rules are archived so that the public is aware of the price. Further, the price need not be fixed in the rules, as it will change over time. Simply referencing that it must be based on cost is sufficient.) Funds collected in this manner should be deposited in the same fund as are licensing fees and regulatory assessments and available for use by the WSSRC subject to the same provisions that govern the use of licensing fees and regulatory assessments.
3. Another recommended addition to Section 2 of the rules would be entitled: “Ex Parte Communications.” This is generally a difficult concept for Commissioners. It was touched upon in the discussion of transparency in item 1., above. The idea is that Commissioners, when deciding certain matters, essentially act as judges. They have to decide between the position of the utility and the position of the Commission Staff (who represents the public). Hence, judges do not discuss the merits of a case with only one party to the case nor among themselves except in publicly noticed formal proceedings. A rule prohibiting such communications adds to the transparency of the Commission’s proceedings and decision-making and builds public and investor trust in the process.

Perhaps the most difficult part of this concept to understand is that when staff members are developing a position on a utility’s rate case, for example, the staff members involved are a party to the case (representing the public) and cannot discuss the merits of a case with their superiors (the Commissioners), except in a public proceeding. In other words, Commissioners would be unable to privately dictate to staff what staff’s position should be and then vote for that position in the public hearing process. That would make a mockery of the process since Commissioners would have already dictated the outcome. While this sometimes

puts the Commission staff in a difficult position, it is necessary for a fair and transparent process.

Accordingly, a provision similar to 1.9.1.3 in the *Resource Manual* should be included in the rules. We recommend the addition of the words “licensing or rate” after the word “any” in Paragraph A. to limit the *ex parte* rule to those types of proceedings. Additionally we recommend the addition of the language “...not involved in a case...” to Paragraph B.3. This would allow Commissioners to receive some technical advice from staff about a case in front of them without speaking to the staff actually working on the case. Finally, Paragraph D. should have an additional option of a Commissioner simply recusing (not voting) himself or herself from voting on a matter in which an *ex parte* communication took place. Hence, we would recommend additional language at the end of Paragraph D. to read: “100,000 Lek. Alternatively, the Commissioner receiving an *ex parte* communication must refrain from participating in the proceeding that was the subject of the *ex parte* communication.”

Currently, the WSSRC is in a situation where, due to it being in a start-up mode it lacks a staff. Commissioners themselves have been doing the staff work and then voting on the rate case. Whether this is appropriate legally is a matter for Albanian authorities. Nevertheless, from a general procedural standpoint this practice should be changed as soon as possible, meaning as soon as a staff is hired and the WSSRC fully operational.

4. The final recommended addition to Section 2 of the rules is entitled “Investigations of Complaints.” Taking complaints from customers about water or wastewater service is an important role that the WSSRC and its staff will play. Taking these complaints and resolving them effectively will additionally enhance the Commission’s credibility. The following sections from the *Resource Manual* are recommended for inclusion in the rules:
 - 3.6.1 Informal Complaints. Except that after the word “docketed” the word “archived” should be inserted and the balance of the Section deleted.
 - 3.6.2 Formal Complaints. Paragraphs A., C., and D. are recommended for inclusion in the rules as they appear in the *Resource Manual*. Paragraph B. in the *Resource Manual* should be changed by striking the word “docketed” and inserting “archived.” Additionally, the words “pleading and service” should also be stricken and replaced with the word “hearing.” Finally, the balance of the Paragraph after the first sentence should be stricken.
 - 3.6.3 Show Cause Orders. This is the formal term for the Commission issuing its own complaint.
 - 3.6.4 Hearing Procedure. Since there are a few peculiarities in conducting a hearing on a formal complaint, it is recommended that this Section be added to supplement the hearing procedure recommended above.

Section 3: Financing the Water Supply and Sanitation Regulatory Commission.

The Regulatory Assessment. Currently the Methodology (*Metodike*) adopted by the WSSRC requires a company in the water or wastewater business to pay a regulatory assessment of between 0.5 and 1.5% of gross income at the time of approval of new rates.

The WSSRC only attempts to collect the assessment from those utilities with which it has had rate cases. This approach has two problems. First, as noted above, it has the appearance of linking rate relief to the paying of the regulatory assessment and not on the merits of a company's case for changed rates. Second, by not collecting the assessment from all companies under its jurisdiction at a regular time each year, the WSSRC deprives itself of the stable income stream that it requires to hire a staff and become fully operational.

The Commission presently takes this approach because it does not believe that the companies can afford to pay the regulatory assessment without rate relief. And, it will not entertain a request for rate relief without a company first having applied for a license, which some companies are presently disinclined to do. (The WSSRC is seeking the assistance of The Ministry of Local Affairs to require all water/wastewater entities in Albania to apply for a license.)

The regulatory assessment should be collected from all utilities under WSSRC jurisdiction annually at the same time. That will allow the Commission (and any appropriating authority in the Government of Albania) to know what the potential income stream is for its budget. Additionally, fixing the regulatory assessment at the time of a rate proceeding could be construed as linking the two concepts, raising rates in exchange for paying a regulatory assessment. The regulatory assessment should be paid annually by all utilities subject to the WSSRC's jurisdiction irrespective of whether they are seeking additional rates. And, as stated above, this should be on a fixed date each year, based on the prior year's gross revenues.

It is recommended that a provision be placed in the rules that the rate will be fixed annually but will not exceed 1.5%. Such a mechanism would allow the Commission to vary the rate annually based on its budgetary needs. Placing it in Section 3 of the rules and removing the language from item 6 in the Methodology will also eliminate the perception of a link between increased rates and payment of the assessment. The proposed language could be: *An assessment of up to 1.5% of the gross income from the previous calendar year of each regulated entity shall be deposited in the Savings Bank Number 1 in Tirana to the account of the WSSRC on April 1 annually. The WSSRC may, by Order, allow all regulated entities to make their payments in equal installments on April 1, July 1, October 1, and January 1.*

The Commission should consider seeking the assistance of the Ministry for Local Affairs in this manner also. Even entities that have not yet been licensed that are providing water/wastewater service are under the Commission's jurisdiction (the license simply

gives them a monopoly to serve in a given area) and should pay the assessment. The fact that a company has an additional expense could also prompt it to desire rate relief that could in turn inspire it to obtain a license. Nevertheless, a directive from the Ministry of Local Affairs (or other legal directive) requiring all water/wastewater companies to submit to the jurisdiction of the WSSRC, as the 1996 Act contemplates, is desirable.

Section 4: General Rules for Licensing.

The existing rules provide some general procedural guidance with respect to licensing, but the Commissioners during a meeting held with them in August asked certain questions.

1. What are the purpose of licensing and what entities should be licensed? The rationale for licensing essentially is found in the philosophy of regulating natural monopolies, such as the water and wastewater industries. That is, licenses are essentially a mechanism to *restrict* entry into an industry. The intended purpose of such control is to regulate competition within each industry in a specific geographic area, thereby preventing overinvestment in high fixed cost industries that are natural monopolies thereby encouraging the achievement of economies of scale. In short, licenses grant a particular firm the exclusive (monopoly) right to provide service within a particular geographic area.

The entity therefore that should be subject to licensure is the entire integrated water or wastewater facility, not its component parts. That is, absent any specific provision of law to the contrary, a component part of a water system, such as a treatment plant should not be subject to licensure, even if the plant is constructed, owned and operated by an entity distinct from the entity that owns the utility. In such cases, the utility is simply contracting out some of its work, but it is the utility itself that remains ultimately responsible. To the extent that regulatory authorities seek to ensure that a utility is making prudent investments and not constructing overcapacity, other mechanisms are available such as requiring WSSRC approval prior to a company entering into debt to finance a project and/or requiring approval prior to a system accepting donor funding for a particular project. (This notion is discussed in further detail in Section 5 of this report.)

In Albania this is presently a theoretical issue since only Tirana has a water treatment facility. Since that facility is part of the integrated water system, the Commission has chosen to not issue a separate license for the treatment facility. However, if a treatment facility were to be built by a third party, the WSSRC would license it. While a plant of this nature probably should be licensed, that role should belong to the Ministry handling water supply or environmental matters. Nevertheless the 1996 Act arguably calls for the WSSRC to license these types of facilities.

Despite licensing these entities, the Commission at present has no intention of regulating their rates, leaving that as a contractual matter between the water

treatment plant and the distribution system utility. (The rate aspect of separate water treatment plants is also discussed in Section 5 of this report.)

In conclusion, the Commission should license only the entire water/wastewater system, but should exercise oversight over fixed asset building and financing by requiring the regulated entities to appear before it and seek permission. The licensing of water treatment plants appears to be an exception to this approach that is required by law. The same approach appears to apply to those entities (if any) involved in sewage treatment, based upon the reference in Section 4 of the rules (Page 5). For clarity, it is recommended that the rules be amended on Page 5, Section 4 to include the words: “*water treatment.*”

(It should be noted that under another Albanian Law, well drillers must be licensed. However, that is a function of the National Water Council, the entity charged with the overall management of Albania’s water supply. We see no conflict between the two provisions of law.)

Other licensing-related matters raised for the Commission’s consideration include:

- 1.1 How should additions to a utility’s client base be handled? Since water and wastewater utilities are still considered to be natural monopolies, it is rational to have only one, regulated, provider of service in a geographic area. In order to obtain a license a potential provider has to meet certain criteria (set forth in the current version of the WSSRC’s rules) that determine whether that entity is capable, fit, and proper to provide the service.

There are two aspects to the problem of service extension: 1) service within a utility’s existing licensed area; 2) service outside of a utility’s licensed area.

In the first case, generally it is desirable to require a utility to serve all applicants for service. Indeed, that should be a provision in the original licensing agreement; the utility must serve all applicants willing to pay if serving them will cause no undue harm to the utility. In most instances utilities are anxious to serve additional customers since it means additional profits (if the service is correctly priced). The key issues are the effect of the extension on: 1) the total return of the company involved; 2) the effect of the extension on existing customers (that is, a commission would generally not want to require a utility to serve additional customers if doing so would be to the detriment of service for existing customers). The WSSRC though, would have the option to issue a license to a new provider if the existing company cannot provide service in a particular area. Whether this is done or not depends on whether the additional customers are geographically scattered within the existing provider’s service area. If so, it is probably rational for the existing provider to

upgrade its plant and equipment so that service can be provided. The WSSRC may authorize financing and/or additional rates to give the company the needed funds for expansion.

If the new area to be served is in a concentrated geographic area, the WSSRC has the option of granting the additional resources as mentioned above, or breaking off that area from the existing licensee's authority and granting a license for the new geographic area to another provider.

In cases where there is a desire by the utility or a request from a potential customer or customers to extend service into an area outside the existing geographical boundaries of the utility's service territory, WSSRC approval should be first obtained. If the desire to expand is on the part of the utility, the same criteria should apply as those asked of a new licensee; capacity, ability to finance the new investment (if needed) in additional plant and equipment, and similar items contained in the existing rules. Ultimately the question the WSSRC has to answer is: Is it in the public interest to allow this utility to expand?

Usually, utilities are anxious to expand into other areas for the same reason they are anxious to serve additional customers within their existing territories. It allows them to make a greater profit, again assuming that the service is appropriately priced. However, ultimately there should be no requirement for a utility to serve outside of its service territory if it chooses to not do so. In other words, it should not be required to honor the request of a customer (with the ability to pay) for service if that customer is located outside of a utility's service territory.

Situations like this generally only occur if the utility cannot make a profit by selling its products or services to the customer. In such instances the WSSRC should have various options. The first option would be to not require the existing utility to serve outside of its service territory and hope that another existing provider would want to serve or, depending upon the size of the market to be served, hope that a new provider would want to serve the area. The second option would be to induce the existing utility to serve the new customer(s) by either allowing an increase in its existing rates so that the utility could make a fair rate of return and/or allow the utility to charge a higher rate to the customer(s) in the new area than is charged existing customers. This would, presumably be based on the higher cost of serving the new area.

Ultimately, the WSSRC, for policy reasons could force a utility to serve such a customer. However, if the utility were forced to do so at a rate that did not cover the utility's costs, the Government would be morally obligated to subsidize the utility for the difference.

For that reason we do not recommend that the WSSRC adopt a rule that would force a utility to serve all those requesting service unless the requesting party is within the utility's existing service territory. The utility should not be forced to comply with requests for service from outside the service territory. Water and wastewater utilities in Albania will need a period of time to raise their rates to cover costs. And, forcing service at rates that would have to be subsidized would put a drain on the already scarce resources of the Albanian Government.

Hence, recommended language for the existing rules would be to insert a new number 7. In Section 4 (renumbering the following Paragraphs to conform) to read: “ *7. Recipients of licenses are obligated to serve all customers that pay for water or wastewater service within their geographic service territories unless otherwise ordered by the Commission.*”

- 1.2 Curtailment of Service. This is an issue that should also be addressed in the rules. Curtailment is a temporary reduction in service to certain customers. In essence it is a temporary deviation from a utility's obligation to fully serve all customers able to pay that are within the utilities service territory. Curtailment also only applies to water utilities.

A temporary shortage in water supply due to drought or a major failure in plant such as a pump failure or mainline break occasions curtailment. In a curtailment, certain uses and users of water would have higher priority than others. For example, ornamental uses of water might be forbidden entirely for the duration of the curtailment period, as could other outdoor uses such as car washing and plant watering.

Some Commissions have a standard hierarchy of what uses are curtailed. When a curtailment is declared, the customers are notified by the company and if they are among those required to curtail (or stop) their water usage, they are obliged to comply. (To make this credible there has to be a sanction such as a total cut-off of water for the duration of the curtailment for non-compliers.) Other Commissions treat curtailments on a company by company basis. For example, the Commission might not order a water company serving an industrial area to curtail water to industrial users first because of the economic dislocations that might occur. In those cases, the Commission could order all companies to file curtailment plans for WSSRC approval. Once approved they would be kept on file. Then, if a company felt that a curtailment was necessary, it would apply to the WSSRC to implement the provisions of its curtailment plan.

Finally, other Commissions simply require that companies request a curtailment order and file the details of the hierarchy of curtailment simultaneously.

Our recommendation on this matter is that a rule should be added that the Commission authorizes curtailments. We further recommend that the rule state that each company have a curtailment plan approved by the WSSRC that will be archived at the WSSRC and that may be put into effect upon an application by the company showing that conditions exist that make it necessary for a curtailment plan to be put into effect. The suggested language would be as follows: *“7. Each water utility shall file a curtailment plan with the Commission for approval. Prior to putting the provisions of such a plan into effect, the company must obtain Commission approval.”* (The subsequent Paragraphs of Section 4. would be renumbered to conform.)

- 1.3 Abandonment of Service. Abandonment of service may be voluntary or involuntary. Voluntary abandonment, either partial or complete, should be approved by the WSSRC. Involuntary abandonment involves a Commission’s full or partial revocation of a utility’s license.

Commissions also generally have the power to revoke or modify a license after one has been issued. Usually, revocation is limited to situations where the holder has never or is no longer providing service, or situations where the holder fails to serve every customer in its service territory and/or to render continuous and adequate service.

In this instance it appears that Pages 7-8 of Section 4. of the rules covers the subject. No additional language is necessary.

2. How Should License Fees/Charges be Set?

Generally, regulatory commissions do not rely on license fees as a significant source of revenue, instead opting for a regulatory assessment. Indeed, many commissions do not even charge a fee for licenses or changes to licenses.

The WSSRC has been charging a fee of approximately U.S. \$300 to issue licenses to water and wastewater companies. According to the rules published in March, 1999, these licenses are valid for one year.

Article 17 of the law establishing the WSSRC (Law No. 8102, dated March 28, 1996), while mentioning that a license may be granted *inter alia* “...upon payment of any fee...” does not require the payment of a fee as a condition for licensure.

The rationale for paying a fee for licensing would in most cases be to defray the costs of processing the license itself, not as a revenue stream for the general operations of a regulatory agency, since once all existing entities are licensed, the additional income from licensing would be small. Nevertheless, the license

fee charged by the WSSRC did provide it with a small, and needed, revenue stream at the time of its start up. However, since the existing rules provide that a license is valid for a one-year period, water and wastewater providers might be exposed to this fee annually. The rules are silent on this point and discussions with one Commissioner indicate that the WSSRC has not taken a firm position as to whether another fee will be imposed in year 2 and subsequent years. (Indeed, the rules are silent on the amount of the fee to be charged the first time.)

Accordingly, we make two recommendations for rule additions on the licensing fee. First, the fee should be charged only upon the first application of an entity for a water or wastewater license. Second, the amount of that fee should be placed in the rule. Such an approach could roughly be called a *de facto* covering of costs. The greatest amount of investigation usually is required prior to the initial licensure. Even this investigation would be fairly limited since existing government-owned companies constitute the bulk, if not all, of the companies being licensed. Future renewals would simply amount to verifying that no material changes in the licensee's business have taken place.

If this recommendation were to be adopted additional language would be required in Section 4. of the rules on page 6, item 4. After the word "Payment" insert *"in the amount of Lek XXXX."* (The actual amount in Lek, roughly equivalent to U.S. \$ 300 would be inserted.) Additionally, page 7 item 6 would be amended by adding: *No additional charge is levied for renewals of existing licenses."*

As a possible third recommendation, consideration should be given to allowing a license to be valid indefinitely, requiring a company to come before the WSSRC only in the case of a material change in the area to be served and/or the nature of the company's business. (This would technically be a modification, not an addition, to the existing rules.) The rules already provide that companies must obtain a license modification from the WSSRC if there is a change sought in the territory to be served and/or the nature of the business. Requiring a licensee to annually renew its license in addition to these requirements may be unduly burdensome.

Implementing this recommendation would require a modification of item 6 on page 7 to strike the words *"for one year period, renewable"* and insert *"indefinitely, unless there has been a material change in the nature of the company's business or the company desires to add or delete territory to its service territory."*

Section 5: Procedural Rules on Tariff-Setting

A fundamental question that has been asked by the WSSRC is whether government owned utilities should be treated differently than investor-owned companies.

This question is relevant because the desired result of water and wastewater sector reform, that includes the establishment of an independent regulatory commission, is to make the currently government-owned companies economically viable and therefore attractive to private sector investors.

Fundamentally, there is no reason that government-owned utilities must be treated differently than investor-owned insofar as the methodology for determining the revenue requirement is concerned. However, the level of revenue requirement may differ since investor-owned utilities often have taxes and a profit (return) for which they are responsible, whereas government-owned utilities often do not.

The WSSRC has adopted the rate of return methodology of economic regulation. However, an examination of the worksheets used by the WSSRC in their initial rate cases as well as its adopted Methodology (with government-owned utilities) indicates that the Commission has used a “cash-needs” approach in setting the utilities’ revenue requirements. In other words, companies that came to the WSSRC for rate changes were authorized sufficient revenues (in the Commission’s judgement) to pay O&M expenses and debt service. This was and is a reasonable approach so long as the utility remains in government hands. (An English translation of the Commission-adopted Methodology is attached as Appendix B.) The WSSRC is also following the principle of “gradualism” in authorizing rate increases to utilities so as to avoid “rate shock” to customers.

For a government-owned utility, sufficient cash is required to pay O & M expenses. Additionally, for capital-related costs, the revenue requirement determination consists of two components: depreciation expense and return on rate base.

Depreciation is a real part of the cost of operating a utility, whether government or investor-owned. Depreciation is the loss in value of facilities, not restored by current maintenance that occurs due to wear and tear, decay, inadequacy, and obsolescence. The annual depreciation expense component of revenue requirements provides for the recovery of the utility’s capital investment over the anticipated capital life of the utility’s depreciable assets. It is, therefore, proper that this expense be borne by the customers benefiting from the use of these assets over time. The funds resulting from the inclusion of depreciation expense in the annual revenue requirement are the property of the utility and are available for capital replacement, improvement, or expansion of its system or for repayment of debt.

The return component is intended to pay the annual interest cost of debt capital and provide a reasonable rate of return on the total equity capital employed to finance physical facilities used to provide water or wastewater service. The annual cost of debt capital can be determined from the accounts of the utility. The cost of equity capital is more difficult to determine. The return to the investor (whether a private group or the government) should be commensurate with the return from other enterprises having corresponding risks. (This does not, however, imply that all water/wastewater utilities in Albania should have the same rate of return.) The return,

moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract and hold capital.

This approach to setting the revenue requirement, as set forth in the Skopje Training and in the Methodology adopted by the WSSRC requires the establishment of a rate base, defined to be the value of the assets on which the utility is entitled to earn a return, and the fixing of a reasonable rate of return on the rate base. The rate base is usually constituted of assets for which the investor risked its own capital. Plant and assets paid for by ratepayers is excluded from rate base since an investor did not incur any risk. In the case of a government-owned utility, the investor risking capital is the government itself. Hence, a rate of return could be applied to the assets paid for with government funds. Any assets paid for by ratepayers or by donor agencies would not be a part of rate base. If assets were installed as the result of loans by donor agencies, the utility would be given sufficient funds to pay the debt service on those loans in its revenue requirement.

In summary, the total revenue requirements of an investor-owned utility include O&M expenses, depreciation expense, applicable taxes, and a return on rate base. Operation and Maintenance expense, depreciation expense, and return on rate base for an investor –owned utility involve the same considerations as for a government owned utility.

Hence we recommend that the WSSRC apply the rate of return methodology to investor and government owned utilities alike. Having one methodology is easier to manage than two. Additionally, as the transition gradually occurs and private ownership comes into the water and wastewater industries in Albania, the WSSRC will have a solid base of experience on which to draw as it regulates investor-owned utilities. The Methodology currently used by the WSSRC, however, taking into account the use of a “cash-needs” approach for existing money-losing state owned enterprises, appears to be adequate until such time as the government-owned enterprises reach a break-even financial condition.

One other consideration should be taken into account in rate setting. First, due to the impact it can have on rates, the WSSRC should authorize any long-term debt incurred by a utility over a set amount. That amount is difficult to recommend, but Lek 15,000,000 might be a reasonable figure. The Commission should exercise this authority because in a rate of return environment, a company has an incentive to build more plant so as to obtain a rate of return on a larger asset base. Borrowing money to build additional plant will, in the short term, increase a company's debt servicing requirements that would be reflected in higher rates. And, once a facility financed with debt is paid off and included in the rate base the rate of return applied to the higher rate base would, all other things being equal, result in higher rates to customers. Hence, it is in the public interest that the WSSRC approve debt financing in excess of a certain amount so that either the repayment of the debt or the increased revenue requirement resulting from a higher rate base only is paid by utility customers only if they receive a benefit from the expenditure. This approval

would extend to donor projects if they were authorized in the form of a loan. Outright grants by donors for or of infrastructure need not be approved.

The recommended language would be to add a new item 4 in Section 5 on page 9 of the rules (renumbering the following paragraphs to conform) to read: “*No utility shall enter into debt in an amount exceeding 15,000,000 Lek without first securing the approval of the Commission.*”

Other Recommendations

1. Criteria for the Sale of Companies

Section 14, subsection C. of the 1996 law requires the Commission to develop standards and procedures to be used in privatizing water or wastewater utilities.

As stated previously, one of the primary objectives of water and wastewater sector reform is to attract private sector participation (PSP). There are many forms of PSP on a continuum from operations assistance to outright acquisition of a total system. In establishing standards for privatizing utilities, the first step is to determine which types of private sector participation will require WSSRC approval.

Common PSP scenarios are included in Appendix C. They include:

- Acquisition
- Joint Venture
- Concession/Build, Own, Transfer (BOT)
- Turnkey Facility/Build, Own, Operate (BOO)
- Full Service Contract
- Contract for Operations
- Contract Management
- Operations Assistance

Once the type(s) of PSP that will require WSSRC approval is established, procedures can be drawn.

Our recommendation is that the rules be augmented to state that only those types of PSP in which partial or complete ownership is transferred to a private sector participant requires WSSRC approval. That is, outright acquisitions, partial acquisitions/joint ventures, and concessions should be subject to Commission approval. Indeed, this is consistent with the existing licensing rules that provide for WSSRC approval in the case of a change in ownership. In all of the above-noted types of arrangements, ownership will be passing in whole or in part from the government to a private sector participant or from one private sector participant to the other.

In short, the cutting edge distinction is whether or not the ownership transfers to a private sector participant. If so, the WSSRC should approve the transfer. If ownership does not transfer, then the WSSRC should play no role in the PSP itself. (However, since as part of the rate setting mechanics the WSSRC will examine a utility's expenses for reasonableness, the Commission will be able to examine how much a utility is paying for operations assistance, for example, and could disallow a part of that expense to be passed along to ratepayers in rates if the Commission thought the expense excessive.)

In setting the standards and procedures for the privatization of companies, it is useful to think of the process in five steps: 1) determining what type of privatization would be optimal (this is largely the responsibility of the government owned utility to essentially make application for a specific type of privatization); 2) preparing background materials and bidding documents; 3) pre-qualifying bidders; 4) bid the project and make the award; 5) effectuate the transfer. Implicit in these stages is the notion that all forms of PSP that require WSSRC approval (i.e., that involve a change in ownership) must be competitively bid.

In setting standards and procedures it is important to keep in mind that the objectives of each type of PSP that the WSSRC would have to approve involve different goals. Obviously a common goal is to enhance the coverage and quality of water service. However, in an outright acquisition (sale), the fiscal objective is to maximize the sales price for the government. The same applies to a partial sale. In a concession, however, the critical fiscal issue is the rate that the concessionaire will charge for the service. Hence some different procedures may have to be established.

The following general procedures are recommended:

1.1 The application to move to some form of PSP should contain:

- The geographical area to be covered;
- The services expected to be provided.

1.2 Preparing background data and bidding documents

- Background data is prepared to give potential investors sufficient data to make an investment decision. This work has been done in many countries by consultants.
- Preparing bidding documents allows a common bid format to be used by all and also aids in the evaluation of the responses. Consultants are also hired in many instances to handle this aspect of the process.
- The technical and financial feasibility of the utility should be modeled. For example, historical financial information should be made available as well as information regarding the service territory and the potential for the service territory. A cash flow analysis should be included.

- In the case of a concession the expected service coverage in terms of number of water and/or wastewater hookups should be stipulated so that potential bidders will know the degree of capital investment needed that in turn will have an impact on the rates concessionaires charge.
- A prospectus should be developed for potential investors.
- The evaluation criteria should be described in detail, both in terms of how the WSSRC will determine whether any bid is technically responsive, the evaluation of the financial viability of the PSP, and the evaluation of the rate to be charged customers.

1.3 Prequalification of Bidders. This step is designed to ensure that only bidders that are qualified to operate a water or wastewater utility are permitted to bid. This step is a time saving one for both the regulator and potential investors. Recommended prequalification criteria would include, but not necessarily be limited to the following:

- Experience in operating water or wastewater systems (as the case may be) is required;
- The actual proposed operator of the utility should be required to have a minimum level of equity (perhaps 25%) in any consortium that is established to bid on the utility;
- Emerging economy experience should be required;
- A minimum level of equity should be possessed by the proposed operator of the system;
- A minimum level of annual billings should be established for potential bidders.

1.4 Bidding the Project and making the Award. Transparency and a rigorous process should characterize the actual bidding. The following criteria are recommended:

- A fee should be charged for submitting a bid. This fee may be used to offset the costs of bid evaluation, often done with the help of consultants;
- The proposed privatization should be advertised in international media;
- A reasonable time frame should be established for potential bidders to submit their bids and a firm deadline for submittal established. No exceptions should be allowed.
- At the deadline for bid submittal, bidders and their bid amounts should be publicly disclosed. However, no other information need be disclosed.
- Evaluation of bids should be done in private by the WSSRC. No specific time frame should be established in the rules in order to allow the WSSRC sufficient time to analyze the bids.

- The award of the winning bidder should be publicly announced. Until such time as the award is made public, no WSSRC member, staff member, or consultant should discuss the substance of the evaluation. Additionally no contact should be had between the bidders and WSSRC members, staff or consultants.
- After the winner is publicly announced, the documents of all bidders should be archived at the WSSRC Offices and available for public inspection. If the Commission believes that any part of any proposal contains proprietary information about the bidding company or consortia, the WSSRC upon a majority vote of a quorum may decide to keep certain information about a bid confidential.

1.5 Transferring the Utility. Upon designating the winning bidder for the utility, a transition plan should be submitted to the WSSRC for approval. Since the timely transfer of the utility is of paramount importance once an award is made this transition plan should be submitted within one month and the Commission should act on it within one month after submittal.

Specific language is not being submitted for this topical area since the Commission may choose to adopt a set of guidelines outside of the rules (not unlike the Methodology for rate increases). In that case, much of the above text can easily be converted into guidelines.

2. Discontinuation of service

This is obviously a very delicate subject. The *Resource Manual* contains a provision that sewer service shall not be terminated for non-payment (4.2.3). However, the *Resource Manual* does have a provision that water service may be discontinued for non-payment of sewer bills. With the combination of water and sewer utilities, this provision is all the more appropriate

This approach has the advantage of mitigating public health concerns. Additionally, there is no other way to discontinue sewer service than to physically dig up a service line, a costly proposition.

However, the fundamental policy question that the Commission faces in this regard is the circumstances under which water service is discontinued for non-payment of sewer bills. Given the historical record in Albania of customers not paying bills both before and after rates are changed, it is recommended that disconnection of water service for non-payment of sewer bills be after a period of 6 months of non-payment. (A similar provision is recommended in the section of the rules dealing with water utilities.)

The *Resource Manual* simply states that discontinuation of water service must be in accordance with Albanian Law (5.4.4). It is unknown what the implications of

that are. If there is no general law to which all businesses would be subject, that would put the Commission in the position of approving disconnection policies in the tariffs that each utility files. That may lead to different policies in different parts of Albania. While there may be reasons for doing so, such a situation could also lead to public confusion. Hence, if there is no overriding provision of Albanian Law, the Commission should consider a common rule for discontinuation of service for non-payment, subject to variations on an exception basis through tariffs.

Absent any waiver/variance from the tariffs, it is recommended that the WSSRC adopt a rule that, absent a specific provision in a water utility's tariffs (approved by the WSSRC), water service may be discontinued after 6 months of non-payment. This language could be contained in a new section of the rules entitled: *Customer Responsibilities*. The specific provision for discontinuation of sewer service would be the language as contained in Section 4.2.3 of the *Resource Manual* with additional language added to Subsections B. and C. at the end of first sentence in each to read: "*after six months of non-payment.*"

Discontinuation of water service for non-payment could be covered with a provision in the same *Customer Responsibilities* Section, to read: "*Water service may be discontinued after six months of non-payment of bills.*"

The six-month provision recommended here is admittedly arbitrary. However, the Commission feels that water companies are presently loathe to cut off water to non-payers due to personal safety fears. While dealing with those fears is technically beyond the scope of this paper, it is felt that giving a customer essentially a six-month grace period is more than reasonable to at least give a utility the moral authority to discontinue service.

3. Connection Policy.

The *Resource Manual* gives an indication of the type of information that a utility may require from an applicant for service as well as the maximum amount of deposit that a utility may require of a customer. It is recommended that section 6.3.2 of the *Resource Manual* be added to the rules. This could also be added in the new Section concerning *Customer Requirements*.

4. General Provisions Regarding Termination of Service.

Chapter Six of the *Resource Manual* contains general procedural requirements for terminating service, both water and wastewater. The provisions essentially provide notice to a customer of an imminent cessation of service thus allowing the customer time to come to an accommodation. The notice provisions are also a form of due process, allowing the customer to bring to the utility's attention any discrepancy between the customer's records and the utility's and/or an error in

the utility's records. If the following provisions were added to the rules, they would be in addition to the "six-month" provisions referenced above.

Accordingly, it is recommended that the following sections from Chapter Six be included in the WSSRC's rules:

- 6.4.2.1 Nonpermissible Reasons to Disconnect Service.
- 6.4.2.2 Termination of Service Without Notice.
(The sample provision in the *Resource Manual* is from the electric industry. Perhaps the only provision that is necessary in a section of this nature in the water or wastewater industry is to discontinue service without notice only if the public health is threatened by something a customer is doing. For a water customer this could be if the customer has a cross-connection that would allow unsanitary water to backflow into the system. A wastewater customer could be subject to termination (of water service) without notice if the customer was discharging hazardous materials or biological waste into the collection system. Recommended language would be:

A. Termination of service without notice is permissible when the following circumstances exist:

1. An obvious hazard to the safety or health of the consumer or the general population or the utility's personnel or facilities.

2. The utility has evidence of meter tampering or fraud.

3. Failure of a customer to comply with the curtailment procedures imposed by a utility during supply shortages.

B. The utility shall not be required to restore service until the conditions which resulted in the termination have been corrected to the satisfaction of the utility.

C. Each utility shall maintain a record of all terminations of service without notice. This record shall be maintained for a minimum of 1 year and shall be available for inspection by the Commission.
- 6.4.2.3 Termination of Service with Notice.
(Since the example in the *Resource Manual* is from the electric industry some modifications would be necessary.) Recommended language would be:

A. A utility may disconnect service to any customer for any reason stated below provided the utility has met the notice requirements established by the Commission:

- 1. Customer violation of any of the utility's tariffs,*
- 2. Failure of the customer to pay a delinquent bill for utility service,*
- 3. Failure to meet or maintain the utility's deposit requirements,*
- 4. Failure of the customer to provide the utility reasonable access to its equipment and property,*
- 6. When necessary for the utility to comply with an order of any governmental agency having such jurisdiction.*

B. Each utility shall maintain a record of all terminations of service with notice. This record shall be maintained for 1 year and be available for Commission inspection.

- 6.4.2.4 Termination Notice Requirements
- 6.4.2.5 Timing of Terminations with Notice
- 6.4.2.6 Landlord/Tenant Rule

6. Tariffs for Sewer Service.

Beginning in calendar year 2000, sewer companies will cease to be “budgeted enterprises” in Albania, meaning they will no longer be fully supported by the government. In most cases, they will be combined with existing water companies and rates will have to be imposed separately for the cost of providing wastewater collection services. (Currently, there are no wastewater treatment plants in the entire country.)

The Commission is currently evaluating the proper methodology for setting wastewater rates, with the idea of adopting a Methodology similar to what it presently has for water rates. It is leaning towards an approach that bases wastewater rates on the amount of water used. This is the preferred method of setting rates since it is based upon a customer’s usage of the collection system.

According to the Commission, a study done in Tirana by a Japanese firm determined that approximately 80% of the city’s water production was disposed of in the wastewater collection system. Accordingly, the WSSRC is gravitating towards an approach in which it takes the amount of water sold, takes 80% of that amount, and uses that product to divide into the cost of sewer service to establish a sewer rate.

Under the circumstances, this is a reasonable approach. While it would be better to take 80% of the water produced instead of the (lesser amount of) water sold, the company would be overbilling the honest customers paying for water service. Most Albanian cities have a high unaccounted for water problem. Indeed, in each rate case it handles, the WSSRC sets specific targets for companies to reduce this

amount. Hence, billing paying water customers for wastewater services based upon 80% of the water they consume fairly bills those customers only for their usage of the system. Billing those customers for a proportionate amount of 80% of the water produced by the water system would overbill them for wastewater services used by “customers” that do not pay for water service. To the extent that the WSSRC is successful in inducing companies to reduce their unaccounted for water, this problem will minimize.

An additional technical issue is that the situation in Tirana may not be exactly replicated in other Albanian cities. However, absent conducting a similar study in each city, the 80% of water sold figure may be the best surrogate available.

At this stage it is premature to make a recommendation on any rule or methodology except that the WSSRC should perhaps use the 80% of water sold number as a default figure unless an applicant can show with its own documentation that the amount of water produced that is discharged into the wastewater collection system is different.

6. Conclusion

The intent of these rule modifications has, as stated above, been to: 1) address those items specifically brought to consultants’ attention by the WSSRC; 2) flesh out those items noted in the consultant’s *Progress Report* of August, 1999; 3) recommend rule additions that, based on the consultants’ experience are necessary to more fully operationalize the new WSSRC. The recommendations contained in this document are not intended to make the new Albanian Regulatory system for water and wastewater overly legalistic.

Nevertheless, as the WSSRC becomes more established and faces events not specifically covered by the rules, the need for additional provisions will be apparent. Hence, a final recommendation is that these rules be reviewed annually for at least five years and modified as the WSSRC feels is necessary in order for it to carry out its duties in a transparent manner for the benefit of consumers and utility investors alike.

The Albanian Water Supply and Sanitation Regulatory Commission is the result of conceptual work begun as early as 1992, culminating in the passage of the Water Supply and Sanitation Regulatory Law in 1996. That Act gave birth to the Albanian Water Supply and Sanitation Regulatory Commission. Since its appointment in 1998, the WSSRC has moved aggressively to implement the basic structure of a water/wastewater regulatory commission as it quickly implemented the essential parts of the training provided in Skopje, Macedonia in December of that year. In a one-year period, it has:

- Established offices;
- Developed an initial set of rules;

- Begun the licensing of water and wastewater utilities in Albania;
- Approved rate changes for 9 water utilities;
- Developed a Methodology for analyzing applications for changes in water rates, based on the Skopje training;
- Conceptually designed a Methodology for changes in applications for wastewater rates;
- Designed formal action plans and contracts that represent the commitment on the part of a utility receiving rate relief to meet certain very specific technical and economic standards, such as reducing line losses by a set amount and increasing the percentage of water produced that is actually billed;
- Gradually added equipment (computers) and received spreadsheet and database training from local vendors.

In short, the Albanian Water Supply and Sanitation Regulatory Commission has moved from a start-up mode to a functioning Commission. It is now at the point, however, where it needs to go to the next level. That next level is the hiring of a professional staff that can assist the Commission in carrying out the provisions of the 1996 Act and the rules and Methodology that the WSSRC has issued. Additionally, a staff is needed to monitor the utilities' compliance with the contracts signed after rate cases pledging enhanced business practices. (In an interview with consultants, one Commissioner indicated that it was unknown whether those companies that had received rate relief were on track in meeting their commitments.) The WSSRC is functioning at essentially the same level it was when last visited by consultants in August. With the exception of the additional computer equipment and related training, the Commission is still following the path of trying to get all utilities licensed, using the incentive of rate relief being only available to licensed utilities. That has, no doubt brought in some utilities. Nevertheless, only 9 rate cases have been completed and the regulatory assessment, the most significant source of funds for the Commission's operation, and the funding source for staff, is only applied after rate cases. Even then, the WSSRC has not succeeded in collecting the regulatory assessment in all instances even after granting rate relief.

7. Recommended Next Steps – January 1 to December 31, 2000

As alluded to above, the theme of the next steps is to take the WSSRC to the next level. Critical to doing so is the addition of staff. Critical to hiring staff is a consistent revenue stream.

The Commission's current approach to developing that revenue stream is to impose a regulatory assessment on those utilities (nine thus far) that have applied for rate relief. To apply for rate relief, the WSSRC requires that utilities obtain a license. That has been somewhat successful. However, there are probably still-unlicensed utilities in Albania that are not particularly enthusiastic about receiving rate relief and therefore have no incentive to apply for a license. The Commission has chosen to seek the assistance of the Ministry of Local Affairs in bringing the balance of the companies (about 50% in the case of water companies) to apply for licenses. That approach may work. Even if it does, however, it leaves intact the practice of imposing a regulatory

assessment only after rate relief is sought. At a rate of approximately 9 companies annually, it will be 4-5 years before all water companies have applied for new rates and the WSSRC imposed a regulatory assessment on them. And, this does not even consider wastewater companies, although they appear to be headed towards combination with water companies. Other alternatives exist to taking 4-5 years to attain a full revenue stream.

- 7.1 The WSSRC should consider simply assessing all water and wastewater companies in Albania a regulatory assessment of a set percentage of revenues on a specific date annually, irrespective of whether the companies are licensed.

As noted above, in regulatory practice, a license simply grants an entity the right to provide monopoly service in a given geographic area. Even if an entity providing water or wastewater service is unlicensed, it is still under the jurisdiction of the regulatory entity. Simply assessing all entities in Albania would assert the authority of the WSSRC and provide the revenue stream to hire a staff to bring the Commission to the next level.

To ensure the Commission's authority to accomplish this under Albanian law an analysis of the 1996 Act and any other relevant legislation by legal experts is required. Hence it is recommended that a local Albanian expert, in conjunction with an expatriate legal advisor make a determination as to whether this recommendation could be implemented if policymakers so desire.

Deliverable: A written analysis of the authority of the WSSRC to issue a regulatory assessment on even unlicensed entities. To the extent that additional authority is required, the deliverable would include an explanation of what authority is needed and draft legislation and/or rules to accomplish that.

Level of Effort:

- Local Legal Expert 20 days
- Expatriate Legal Expert 20 days

- 7.2 A regulatory expert with practical experience should travel to Albania quarterly to meet with the Commission and discuss the "real world" issues and problems that have arisen in regulating the sector and suggest solutions.

Among the solutions might be updated rules to resolve the issues. That is, these sessions could be the genesis of the periodic updates to the rules recommended in the body of this report. These trips would be approximately one week long, *but could be combined with other next steps listed below.*

Deliverable: For each trip a report articulating the problems raised by the WSSRC and the proposed solutions. Each report should also provide follow up on how well the proposed solution from the previous trip is working.

Level of Effort:

- Regulatory Expert 32 Days

- 7.3 Establish internal standard operating procedures, consistent with the rules (and the above recommendation on transparency) to make the Commission's proceedings transparent to the public and the investment community.

This recommendation involves three essential tasks in addition to adopting the rule change recommended in the body of this report: a) establishing a "Docket Control Center" where all documents relevant to a regulated utility can be accessed by the public; b) establishing standard operating procedures for how applications are processed internally; c) training for Commissioners in transparency, including conducting a rate hearing in a public forum.

Deliverables:

- A functioning Docket Control Center with written operating procedures;
- A written set of general internal operating procedures. (This deliverable may include written job descriptions.)
- Formal training in conducting a rate hearing, including the materials necessary to conduct a "mock hearing" in a public forum.

Level of Effort:

- Regulatory Specialist (experienced in Docket Control) 20 Days
- Regulatory Specialist (experienced in internal operating procedures) 20 Days
- Hearing Specialist (experienced in the conduct of hearings and procedural matters) 20 Days

Note: It is possible, especially as concerns the Docket Control and internal operating procedures tasks, that the same person could consult on all of these matters.

- 7.4 Assessments should be made of:

- The progress the water/wastewater companies that have received rate relief have made in fulfilling the terms of their contracts;
- How the investor community perceives the WSSRC and what, if anything, is lacking to prompt investors to take a financial interest in the sector;
- The perception of the donor community of the sector and its plans for future participation.

The rationale for the first assessment is self-evident: Has the WSSRC been effective, insofar as those 9+ utilities that have gotten rate relief in enhancing the quantity, quality and dependability of water/wastewater services?

The second assessment gets to the ultimate rationale for a transparent regulatory system: to help promote private sector participation in the sector. The question to be answered here is: Have the Commission's actions enticed the

investor community to seriously consider investments in the Albanian water/wastewater sector? And if not, are there reasonable remedial actions that are in the public interest that can be taken?

The third assessment would be a comprehensive look at the plans of the donor community insofar as providing hard assets or technical assistance. This assessment would allow for coordination of efforts and leveraging of resources.

Deliverables: Written reports and recommendations on each of the three topics listed.

Level of Effort:

- Regulatory Specialist (first assessment) 10 Days
- Financial Analyst (second assessment) 10 Days
- Policy Analyst (third assessment) 10 Days

Note: Depending upon the individual, 2-3 of these assessments could be done by one person.

- 7.5 A preliminary plan should be developed for combining the three existing Albanian utility regulatory organisms (electricity, telecommunications, and water/wastewater) into one.

There is no reason that a country the size of Albania three sector-specific agencies. The telephone and electric agencies are due to sunset in 2001. Hence some conceptual work should be done on the benefits of consolidation and presented to the Government of Albania to determine their level of interest in the idea, since the mechanics of combining the agencies would undoubtedly require specific government actions.

Deliverable: A written document outlining the advantages and disadvantages of such a consolidation along with an outline of an organizational chart, budget and legal changes necessary to implement this recommendation.

Level of Effort:

- Public Administration Specialist 10 Days

Summary Level of Effort:

- Local Legal Expert 20 Days
- Expatriate Legal/Hearing Expert 40 Days
- Regulatory Expert(s) 82 Days
- Financial Analyst 10 Days
- Policy Analyst 10 Days
- Public Administration Specialist 10 Days

TOTAL LOE 172 Days